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In the Supreme Court of the United States

OCTOBER TERM 1927

W. A. FROST, Doing Business Under the Name of MITCHELL GIN COMPANY,
Appellant,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, FRED CAPSHAW, FRANK CARTER ET AL., ETC., ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

BRIEF OF APPELLANT.

ROBT. M. RAINEY,
STREETER B. FLYNN,
Attorneys for Appellants.

RAINEY, FLYNN, GREEN & ANDERSON,
CALVIN JONES,
Of Counsel.

Utterback Typesetting Co., Scott Thompson Bldg., Oklahoma City, W. 4050

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NO. 740

In the Supreme Court of the United States

OCTOBER TERM 1927

W. A. FROST, Doing Business Under the Name of MITCHELL GIN COMPANY,
Appellant,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, FRED CAPSHAW, FRANK CARTER ET AL., ETC., ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

BRIEF OF APPELLANT.

Jurisdiction.

This suit was instituted in the United States District Court for the Western District of Oklahoma by the filing of a bill in which both an interlocutory and permanent injunction were prayed against the Corporation Commission of the State of Oklahoma, its members and the Durant Co-Operative Gin Company.

The jurisdiction of the district court was invoked on the ground that the announced intention of the Commission to issue a license in favor of the Durant Co-Operative Gin Company authorizing it to construct, maintain and operate a cotton gin was in violation of rights vested in appellant under the Fourteenth Amendment to the Constitution of the United States, and particularly that portion thereof guaranteeing due process of law and the equal protection of the laws.

A court of three judges convened pursuant to Section 266 of the Judicial Code, denied the temporary injunction, and appellant prosecuted an appeal to this Court (No. 375, October Term, 1926), which affirmed the action of the District Court on authority of *Chicago G. W. R. Co.* v. *Kendall et al.*, 266 U. S. 94, 100. The final hearing was thereafter had before a court of three judges and on December 13, 1927 a decree was entered dismissing appellant's bill. From such action this appeal is prosecuted, and a review by this Court is proper. Judicial Code, Sec. 266; *Smith* v. *Wilson*, 273 U. S. 388; *Clark* v. *Poor*, 274 U. S. 554; *Interstate Buses Corp.* v. *Blodgett et al.*, opinion filed February 20, 1928 (not yet reported); *Gulf Fisheries Co.* v. *D. B. MacIverney, County Attorney*, filed February 20, 1928 (not yet reported).

Question Presented.

Appellant W. A. Frost, an individual, doing business under the firm name of Mitchell Gin Company is engaged in the business of operating a cotton gin in the City of Durant, Oklahoma (R. 65). Cotton gins in the State of Oklahoma are public utilities and the business of ginning seed cotton has been declared a public business. Under the statutes of the State, before anyone may engage in such business it is necessary to secure a license from the Corporation Commission of the State, and such license is granted only upon a showing that the construction of a gin is a needed utility, and that the applicant is a competent and desirable corporation or person to engage in the business.

The Act contains an exception, however, to the effect that permits shall be granted to gins which are to be run co-operatively upon presentation by the applicant of a petition signed by one hundred citizens and taxpayers of the community in which the proposed gin is to be located.

Appellant is the holder of a valid license from the Corporation Commission, and is engaged in the business of ginning cotton (R. 65). In order to protect his property he instituted this action seeking to enjoin the issuance of a license to the Durant Co-Operative Gin Company, which had filed its application with the Corporation Commission and had presented the requisite petition containing the names of one hundred citizens and taxpayers (R. 72).

The question presented is whether said proviso exempting those desiring to establish and operate a gin to be run co-operatively from proving that said gin is a needed utility conflicts with the equal protection and due process clauses of the Fourteenth Amendment. The Corporation Commission ruled that the proviso was mandatory, and that it would grant the license or permit without inquiring into the question of the necessity for an additional gin in the vicinity of Durant, and without regard to the competency and reliability of the co-operative applicant.

The district court, by dismissing the bill, in effect, held the classification non-discrimnatory, and the Act constitutional.

Statement.

The case was submitted upon an agreed statement of facts (R. 64) which may be briefly summarized as follows: Appellant W. A. Frost, an individual, is engaged in the cotton ginning business and owns a gin in the City of Durant, Oklahoma, which is operated under and by virtue of a license duly issued by the Corporation Commission (R. 65) as provided by Article 40, chapter 7, Sec. 3714, C. O. S. 1921, as amended by chapter 191, Session Laws of Oklahoma, 1923 and by Chapter 109, Session Laws of Oklahoma 1925 (see appendix.)

Fred Capshaw, Frank Carter and C. C. Childers are

the duly elected, qualified and acting members of the Corporation Commission and Edwin Dabney is the Attorney General of the State of Oklahoma. The amount in controversy, exclusive of interest and costs, exceeds the sum of $3,000 (R. 65).

It is further stipulated that the Durant Co-Operative Gin Company in 1926 filed with the Corporation Commission its application for permission to establish a cotton gin at Durant, and that appellant protested in writing against the issuance of such license or permit. A hearing was thereafter had before the Corporation Commission on April 3, and 14, 1926 (R. 68) at which appellant objected to the introduction of any evidence on the ground that Sec. 3714, C. O. S., 1921, as amended in 1925, which in part provides that:

> "On the presentation of a petition for the establishment of a gin to be run co-operatively, signed by 100 citizens and taxpayers of the community where the gin is to be located, the Corporation Commission shall issue a license for said gin."

is unconstitutional for the reason that it is discriminatory, arbitrary and denies appellant due process of law and the equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States (R. 69).

After overruling appellant's objection the Articles of Incorporation of the Durant Co-operative Gin Company were introduced and also the application with the requisite

number of signatures. Appellant was denied the right to introduce evidence in support of his protest and was refused permission to cross-examine the applicant's witnesses except on the question of whether or not it had complied with the law. In sustaining the objection to the scope of the cross-examination and to the introduction of any evidence, by appellant, the Commission through its chairman said (R. 72):

> "Chairman Capshaw: And the Commission is going to refuse to permit any evidence on behalf of the protestant in regard to the necessity or for the purpose of showing there is no necessity for any additional gins at this point on the theory that under the law passed by the 1925 Legislature, it is mandatory to grant these permits whether there is any necessity or not.
>
> "Mr. Rainey: Exception.
>
> "Chairman Capshaw: The Commission announces that the permit applied for in this cause will be issued by the Commission after a conference of the full Commission and within the next few days. That permit will be held up pending the conference of the full Commission but will not be held up to exceed a few days."

At the conclusion of the hearing before Hon. Arba Van Valkenburg, Circuit Judge, Hon. Robert L. Williams and Hon. John H. Cotteral, District Judges, appellant's bill was dismissed (R. 58) and an opinion prepared by Judge Williams was filed (R. 29).

Opinion of the Court.

The opinion (R. 29) after setting forth the contents of the complaint, answer and agreed statement of facts, states:

> "The sole objection made before the State Corporation Commission to the issuance of the license or permit was on the ground that the Act under which it was sought was unconstitutional as violating the Federal Constitution, and that is the ground under which a writ of injunction is here sought" (R. 38).

The Court then discusses the two acts under which co-operative organizations may be formed, and states that the act in question with its proviso is valid as to gins organized under the co-operative act set forth in Article 16, chapter 34, C. O. S., 1921, Sections 5598-5621 inclusive, and amendments thereto (R. 40). Appellee gin company was organized, however, under Article 19, chapter 34, C. O. S., 1921, Sections 5637-5652 inclusive, referred to as the 1919 Act.

The opinion then continues, and concludes that the Act is not unconstitutional regardless under which co-operative act the applicant was organized, since the methods or organization of co-operative corporations and their powers under the 1919 Act were sufficient to justify a classification which would permit treatment different from that accorded to individuals, partnerships and corporations desiring to operate gins in the State (R. 57). The court in passing on this question assumed that complainant had a sufficient property

interest in the permit or license granted by the Commission to invoke the protection of the Fourteenth Amendment (R. 57-58).

Summary of Argument.

Cotton gins in the State of Oklahoma are public utilities, and the business of ginning seed cotton is a public business.

Sec. 3712, C. O. S. 1921.

No gin can be maintained or operated without a license from the State Corporation Commission.

Sec. 3713, C. O. S. 1921.

Licenses are granted after a hearing in the event the applicant proves the establishment of the proposed gin necessary. Such a showing must be made by everyone except an applicant who desires to operate a gin to be run co-operatively, in such a case the applicant need not show necessity, if he merely presents a petition signed by 100 citizens and taxpayers residing in the locality where the proposed gin is to be located.

Sec. 3714, C. O. S. 1921.

Appellant contends such excepting proviso is discriminatory, deprives him of due process of law and of the equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States.

I.

Appellant's right to maintain and operate a gin is a franchise or a property right in the nature of a franchise.

The grant of the right to operate a gin can be secured from the sovereign alone. It is essential, and permits the holder to engage in a business which he could not without the grant.

—*McPhee et al.* v. *Union Pacific Railway*, 158 Fed. 5, 10.

New Orleans Gas Co. v. *Louisiana Light Co.*, 115 U. S. 650, 659, 6 Sup. Ct. 252, 29 L. ed. 516.

Walla Walla v. *Walla Walla Water Co.*, 172 U. S. 1, 9, 19 Sup. Ct. 77, 43 L. ed. 341.

Denver v. *City Cable Co.*, 22 Colo. 565, 45 Pac. 439.

Donahue v. *Morgan*, 24 Colo. 389, 390, 400, 50 Pac. 1038.

Thomas v. *Grand Junction*, 13 Colo. App. 80, 81, 65 Pac. 665.

City of Denver v. *Denver Union Water Co.*, (Colo.) 91 Pac. 918, 919.

Morgan v. *Lee*, 93 U. S. 217, 213.

California v. *Pacific R. R. Co.*, 127 U. S. 1, 40.

Owensboro v. *Cumberland T. & T. Co.*, 230 U. S. 58, 65.

Trustee, etc. of South Hampton v. *Jessup*, 56 N. E. 538.

State v. *Country Club*, 173 S. W. 570.

The right granted is to engage in a public business and

to collect for the service rendered, such tolls as may be fixed by the sovereign.

—*Charles River Bridge Co.* v. *Warren Bridge et al.*, 11 Peters 420.

Monongahela Navigation Co. v. *U. S.*, 148 U. S. 312, 328, 329.

The expenditure of a considerable sum of money for the erection of a gin plant was contemplated at the time of the grant to appellant. The presumption in such instances is that the grant is of a more substantial character than a mere license.

—*Boise City* v. *Boise Artesian Hot & Cold Water Co.*, 230 U. S. 84, 90.

Owensboro v. *Telephone & Telegraph Co.*, 230 U. S. 53, 64, 65 and 66.

Perpetuity and exclusiveness are not essential characteristics of a franchise.

—*Boise City* v. *Boise Artesian Hot & Cold Water Co.*, 230 U. S. 84, 90.

Charles River Bridge Co. v. *Warren Bridge et al.*, 11 Peters 420.

Long Island Water Supply Co., v. *Brooklyn*, 166 U. S. 685, 689.

Beinville Water Supply Co. v. *Mobile*, 186 U. S. 212, 217, 218, 223.

Old Colony Trust Co. v. *Omaha*, 230 U. S. 100, 115.

The fact that the right granted may be subject to the

constitutional and statutory powers of the State as well as to the police powers will not prevent it from being a franchise.

—*Bienville Water Supply Co.* v. *Mobile*, 186 U. S. 212, 217, 218, 223.

Long Island Water Supply Co. v. *Brooklyn*, 166 U. S. 685, 689.

Owensboro v. *Cumberland Telephone Co.*, 230 U. S. 58, 65.

II.

The right held by appellant to operate a gin will be protected by a court of equity.

Franchises and rights in the nature of a franchise have from the earliest times been protected by courts of equity.

—*Owensboro* v. *Cumberland Telephone Co.*, 230 U. S. 58, 65.

Boise City v. *Boise City, etc., Water Co.*, 230 U. S. 84.

Such rights are recognized as property and scrupulously guarded.

—*Charles River Bridge Co.* v. *Warren Bridge Co.*, 11 Peters 420.

The interference with the collection of tolls constitutes a taking of property.

—*Charles River Bridge Co.* v. *Warren Bridge Co.*, 11 Peters 420.

The right for which protection is sought need not be

exclusive in the sense that other valid grants may not be made. Such a grant is exclusive, however, insofar as all are concerned to whom a valid grant has not been made.

—*Bartlesville Electric Light & Power Co.* v. *Bartlesville Interurban Ry. Co.*, 26 Okla. 453, 29 L. R. A. (N. S.) 77.

Tulsa Street Ry. Co. v. *Oklahoma Union Traction Co.*, 27 Okla. 339, 342, 343.

Henry v. *Bartlesville Gas & Oil Co.*, 33 Okla. 473, 478.

Melville Gas Light Co. v. *Vineland Light & Power Co.*, 72 N. J. Eq. 305.

Peoples Transit Co., v. *Henshaw*, 20 Fed. (2nd) 87.

Pomeroy's Equity Jurisprudence, Vol. 5, Sec. 2016, 2017.

III.

Appellant is denied due process of law and equal protection of the laws.

The act in question makes an unauthorized arbitrary and discriminatory classification of persons engaged in the same business, and lays greater burdens on some that are borne by others. The Fourteenth Amendment affords protection in such instances:

—*Ex parte Virginia*, 100 U. S. 339.

Barbier v. *Connoly*, 113 U. S. 27, 31.

Truax v. *Corrigan*, 257 U. S. 33.

Soon Hing v. *Crowley*, 113 U. S. 703, 709.

Yick Woo v. *Hopkins*, 118 U. S. 356, 369.

Hayes v. *Missouri*, 120 U. S. 68.

G. C. & S. F. v. *Ellis*, 165 U. S. 150, 154.

Cotting v. *K. C. Stock Yards et al.*, 183 U. S. 79.

Connolly v. *Union Sewer Pipe Co.*, 184 U. S. 540.

Southern Ry. v. *Green*, 216 U. S. 400.

A., T. & S. F. v. *Vosburg*, 238 U. S. 56.

Truax v. *Raich*, 239 U. S. 33.

Power Mfg. v. *Saunders*, 274 U. S. 490.

Quaker City Cab Co. v. *Pa.* (not yet reported; filed May 28, 1928).

The amendment does not prevent proper classification.

Southern Ry. Co. v. *Greene*, 216 U. S. 417.

The reasonableness of the classification is always open to judicial review.

G. C. & S. F. Ry. Co. v. *Ellis*, 165 U. S. 150.

While no general rules can be formulated which will apply to every case, cases dealing with very similar questions are persuasive.

—*Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540.

Liberty Warehouse Co., v. *Burley Tobacco Growers Co-op. Market Assn.* (not yet reported; opinion filed Feb. 20, 1928).

The challenged classification rests on ownership.

—*Quaker City Cab Co.* v. *Pa.* (not yet reported; filed May 28, 1928).

State v. *Nashville C. & S. L. Ry. Co.*, 124 Tenn. 1.

After the State has declared as provided by statute that gins should be licensed only in localities where they are necessary to handle the crop, and has recognized that the unrestrained erection and duplications of facilities in a regulated business is economically unsound and against the public policy of the State, an attempt to favoring certain groups under the guise of classification will be restrained.

—*Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540.

Liberty Warehouse v. *Burley Tobacco Growers Co-op. Market Ass'n* (not yet reported; opinion filed Feb. 20, 1928).

IV.

The proviso is separable from the remainder of the Act.

—*Leob* v. *Twp. Trustees*, 179 U. S. 472, 490,

Connolly v. *Union Sewer Pipe Co.*, 184 U. S. 540.

Truax v. *Corrigan*, 257 U. S. 312, 341, 342.

Section 3718, C. O. S., 1921.

Berea College v. *Ky.*, 211 U. S. 45, 54, 55.

Errors Assigned.

To present the questions involved the following assignments of error were made (R. 59):

The District Court of the United States for the Western District of Oklahoma erred in holding Sec. 3714, Compiled Laws of Oklahoma, as amended by chap. 109 of the Session

Laws of 1925, constitutional, and that the aforementioned amendment, containing the following provision:

> "That on the presentation of a petition for the establishment of a gin to be run co-operatively, signed by one hundred citizens and taxpayers of the community where the gin is to be located the Corporation Commission shall issue a license for said gin."

is constitutional, and that the said proviso does not deprive this complainant of his property without due process of law and does not deny to this complainant equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

ARGUMENT AND BRIEF.

The Oklahoma Legislature in 1916 declared cotton gins public utilities and the operation of the same for the purpose of ginning seed cotton a public business (Sec. 3712, C. O. S., 1921. See appendix).

Section 3713, C. O. S., 1921, as amended by Chapter 191, Session Laws, 1923, (see appendix) provides that no one shall be permitted to maintain or operate a gin for the purpose of ginning seed cotton without first having procured from the Corporation Commission a license and paid the prescribed fees.

Section 3714, C. O. S., 1921 (see appendix) was amended

by the Legislature in 1923, chap. 191, Session Laws 1923, and later again amended in 1925, chap. 109, Session Laws 1925. As last amended it provides that the Corporation Commission, in issuing a license, shall have the right to take into consideration the necessity for the operation of a gin at the desired place, provided that nothing in the Act shall operate to prevent the licensing of gins already established except for violation of the Commission's rules and regulations, and furthermore that no new gin shall be constructed, installed or licensed or any old gin removed from one place to another until satisfactory showing shall have been made to the Commission setting forth that such gin is a needed utility and that the proposed corporation, company, firm or individual is competent, and that it is a desirable corporation, company, firm or individual, to establish and operate said gin as may appear in the discretion of the Commission.

The following proviso then appears:

> "*Provided,* that on the presentation of a petition for the establishment of a gin to be run co-operatively, signed by 100 citizens and taxpayers of the community where the gin is to be located, the Corporation Commission shall issue a license for said gin."

The original Act, Section 3714, C. O. S. 1921, as amended by the Legislature in 1923 (see appendix) was substantially the same as the present Act, except for the above proviso.

Under the 1923 Act it was incumbent upon *all applicants* to make a satisfactory showing to the Commission that the gin sought to be licensed was a needed utility.

Appellant contends that the present Act, chapter 109, Session Laws 1925, exempting co-operatively operated gins organized under the 1919 Act (Art. 19, chap. 34), from the burden of showing the necessity for an additional gin in the locality is discriminatory, arbitrary and deprives him of due process and of the equal protection of the laws in contravention to the Fourteenth Amendment of the Constitution of the United States.

I.

Appellant's right to maintain and operate a gin is a franchise or a property right in the nature of a franchise.

Section 3712, C. O. S., 1921 (see appendix), declares cotton gins to be public utilities and the operation of the same to be a public business.

Section 3713, C. O. S. 1921, as amended (see appendix) provides that no gin shall be maintained or operated until a license or permit has been secured from the Corporation Commission.

Section 3714, C. O. S., 1921, as amended by Sec. 1, chap. 109, page 147, Session Laws 1925, provides that licenses shall be issued in the event the Commission determines after a hearing that the proposed gin is a needed utility

and that the applicant is a competent and desirable person or corporation to operate a gin. The Commission is given the same power over gins in regard to the regulation of rates, service, etc., as it is over other public utilities in the State (Sec. 3715, C. O. S., 1921, as amended. Sec. 3, chap. 191, Session Laws 1923. See appendix).

The right granted to maintain and operate a gin we contend is a franchise or a property right in the nature of a franchise as distinguished from a mere license and as such is entitled to protection just as any other property or property right. The exact line of demarcation between a license and a franchise, as Judge Sanborn says in the case of *McPhee et al.* v. *Union Pacific Railway Company,* 158 Fed. 510, may not always be clearly drawn. In his opinion the salient features of a franschise are given as follows:

> "A franchise is a right or privilege granted by the sovereignty to one or more parties to do some act or acts which they could not perform without this grant from the sovereign power. *Bank of Augusta* v. *Earle,* 13 Pet. 595, 10 L. ed. 274; *D. & S. Ry. Co.,* v. *Denver City Ry. Co.,* 2 Colo. 673, 682.
>
> * * * * * * * * * * *
>
> "A right or privilege which is essential to the performance of the general function or purpose of the grantee, and which is and can be granted by the sovereignty alone, such as the right or privilege of a corporation to operate an ordinary or commercial railroad, a street railroad, city waterworks or gasworks, and to collect tolls therefor, is a franchise. *New Orleans Gas Co.* v. *Louisiana Light Co.,* 115 U. S. 650, 659, 6 Sup.

Ct. 252, 29 L. ed. 516; *Walla Walla* v. *Walla Walla Water Co.*, 172 U. S. 1, 9, 19 Sup. Ct. 77, 43 L. ed. 341; *Denver* v. *City Cable Co.*, 22 Colo. 565, 45 Pac. 439; *Donahue* v. *Morgan*, 24 Colo. 389, 390, 400, 50 Pac. 1038; *Thomas* v. *Grand Junction*, 13 Colo. App. 80, 81, 65 Pac. 665; *City of Denver* v. *Denver Union Water Co.* (Colo.), 91 Pac. 918, 919."

See, also:

—*Morgan* v. *Lee*, 93 U. S. 217, 213.

California v. *Pacific Railroad Co.*, 127 U. S. 1, 40.

Owensboro v. *Cumberland T. & T. Co.*, 230 U. S. 58, 65.

Trustee, etc., of South Hampton v. *Jessup*, 56 N. E. 538.

State v. *Country Club*, 173 S. W. 570.

It is quite clear that the right held by appellant to maintain and operate a gin is a right granted by the sovereignty to perform a public service which he could not perform without the grant. He has a right to conduct a public business and to collect for the services performed such rates as may be fixed by the sovereignty. The right granted is neither personal nor temporary and if exercised necessitates the expenditure by the grantee of a large sum of money in the erection of a gin plant.

As was said in the case of *Boise City* v. *Boise Artesian Hot & Cold Water Co.*, 230 U. S. 84, 90, the presumption is that where the expenditure of a considerable sum of money is contemplated under the right granted that it is

more substantial than a mere revocable license. The right to operate a gin is of great value and in fact without the grant the gin plant would be valueless except as junk.

—*Owensboro* v. *Telephone & Telegraph Co.*, 230 U. S. 53, 64, 65 and 66.

The State, in effect, under the gin act has granted two rights which we will hereafter refer to as the franchise:

First. The right to maintain a gin.

Second. The right to operate a gin.

As an incident to this latter right, it granted the right to collect such charges or tolls as may be fixed by the State in return for the grantees' assumption of public duties and burdens. The right to collect tolls for the rendition of a public service has from the earliest times been considered a franchise.

—*Charles River Bridge Co.* v. *Warren Bridge Co. et al.*, 11 Peters 420.

Monongahela Navigation Co. v. *U. S.*, 148 U. S. 312, 328, 329.

In the opinion of the lower court it is intimated that the right granted is a mere revocable license and not a franchise, since perpetual and exclusive franchises under the Constitution of Oklahoma are prohibited.

—Article II, Sec. 32.

Article V, Sec. 51.

Article XIX, Sec. 7.

Perpetuity and exclusiveness are not essential characteristics of franchises.

—*Boise City* v. *Boise City, etc., Water Co.*, 230 U. S. 84.

Owensboro v. *Cumberland T. & T. Co.*, 230 U. S. 58.

Bartlesville Electric L. & P. Co. v. *Bartlesville Interurban Ry. Co.*, 26 Okla. 453, 455, 456.

Exclusiveness has repeatedly been held not to be one of the tests for determining whether the right granted is a license or a franchise.

—*Charles River Bridge Co.* v. *Warren Bridge Co.*, 11 Peters 420.

Long Island Water Supply Co. v. *Brooklyn*, 166 U. S. 685, 689.

Bienville Water Supply Co. v. *Mobile*, 186 U. S. 212, 217, 218, 223.

Old Colony Trust Co. v. *Omaha*, 230 U. S. 100, 115.

Bartlesville Electric L. & P. Co. v. *Bartlesville Interurban Ry. Co.*, 26 Okla. 453, 456.

Milhan et al. v. *Sharp et al.*, 27 N. Y. 611.

A right granted may still be a franchise, although subject to the constitutional and statutory powers of the State, and such other powers as may be reserved by the State in its grant.

—*Beinville Water Supply Co.* v. *Mobile*, 186 U. S. 212, 217.

The fact that the right granted is in addition subject to the police powers of the State will also not prevent it from being a franchise.

—*Long Island Water Supply Co.* v. *Brooklyn*, 166 U. S. 685, 689.

Owensboro v. *Cumberland Telephone Co.*, 230 U. S. 58, 65.

The right granted in the instant case is subject to all the constitutional and statutory powers of the State and this fact coupled with the fact that it may be forfeited for abuse, non-user, etc., will not prevent it from being a franchise.

—*Owensboro* v. *Cumberland T. & T. Co.*, 230 U. S. 58.

Old Colony Trust Co. v. *Omaha*, 230 U. S. 100, 114.

The fact that appellant in the operation of its gin does not use any public property and is not vested with the powers of eminent domain can lend no force to the argument that its right is a mere license and not a franchise, since the right to maintain fairs and markets have been held to be a franchise.

—*Charles River Bridge Co.*, v. *Warren Bridge Co., et al.*, 11 Peters 420.

The right to engage in the banking and insurance business and to sell liquor has also been held to be a franchise to be enjoyed by those to whom such privilege is granted

by the laws of the State, and it is no less a franchise although the business to be engaged in was one which might lawfully have been pursued by anyone at common law without permission from the sovereignty.

While a francise must come from the sovereignty it may delegate its right to some other body such as a municipality or, in this instance, the Corporation Commission.

Owensboro v. *Cumberland T. & T. Co.*, 230 U. S. 58, 65.

In the opinion of the lower court very little consideration is devoted to the question of the nature of the right granted appellant. The court assumes appellant has a property right entitled to protection but intimates that had it gone into the question that its holding would be that the right is a mere revocable license on authority of *Boise City Artesian Hot & Cold Water Co.* v. *Boise City*, 123 Fed. 232. The selection of this case to sustain the court's position was unfortunate since the case cannot stand in view of this Court's opinion in *Boise City Artesian Hot & Cold Water Co.* v. *Boise City*, 230 U. S. 84. The case in 123 Fed. 232 is the basis of the Circuit Court of Appeals' opinion in a case of the same style in 186 Fed. 705. The mandate in this latter case which had not gone down at the time of the rendition of this Court's opinion in 230 U. S. 84 was directed to be issued in conformity therewith. 208 Fed. 546.

The court below evidently conceived appellant's rights

to be similar to the rights of the Boise City Artesian Hot & Cold Water Co. We agree with the lower court the rights granted are similar and under this Court's opinion these rights are of sufficient substance to be entitled to protection. In no case which we have examined except that in 123 Fed. 232, can we find a holding to the effect that a right granted to engage in a completely regulated public business under which large expenditures have been made is a mere revocable license. *Owensboro* v. *Cumberland Telephone Co.*, 230 U. S. 58, 64. Such a position is unreasonable and the presumption is the other way, as was pointed in the Court's opinion in 230 U. S. 89, 90, 91.

II.

The right held by appellant to operate a gin will be protected by a court of equity.

The next question which naturally arises is as to whether a court of equity will lend its aid and by means of an injunction to restrain others who seek to establish gins to compete with appellant under authority of a void law. Courts of equity have from the earliest times protected the enjoinment of franchises by means of injunctions.

—*Owensboro* v. *Cumberland Telephone Co.*, 230 U. S. 58, 65.

Boise Water Co. v. *Boise City*, 230 U. S. 84, 90.

They are recognized as property and scrupulously

guarded. In Mr. Justice M'Lean's opinion in *Charles River Bridge Co. v. Warren Bridge, et al.*, 11 Peters 402, 560, we find the following:

> "The franchise though incorporeal in legal contemplation has body and extension; and having been granted is not less scrupulously guarded by the principles of law than an interest in the soil."

It is also held that the tolls are charges collected by the grantee and the profit therefrom, if interfered with, constitutes a taking of property. In that case an injunction was sought by the Charles River Bridge Company against the Warren Bridge Company on the ground that the Warren Bridge Company was asserting a franchise under a void law. The jurisdiction of the Court to entertain the bill was sustained and in support of its conclusion we find the following at page 572:

> "In the case of *Osborne et al. v. Bank of United States*, 9 Wheat 738, this Court says:
>
> "'The Circuit Courts of the United States have jurisdiction over a bill in equity filed by the Bank of the United States for the purpose of protecting the bank in the exercise of its franchises which are threatened with invasion aand destruction under an unconstitutional state law; and as the state itself cannot be made a defendant, it may be maintained against the officers and agents of the State who are appointed to execute such laws.'"

Mr. Justice Story in his dissenting opinion agreed with a majority that a court of equity had jurisdiction of

the case and in support thereof quotes from Paston J., 22 Hen. Vi. 14b, as follows (page 620).

> " 'If, says he, I have a market or a fair on a particular day and another sets up a market or a fair on the same day in a ville, which is near to my market so that my market or my fair is impaired, I shall have against him an assize of nuisance or an action on the case.'
>
> "And the same law is:
>
> " 'If I have an ancient ferry in ville and another sets up another ferry upon the same river near to my ferry so that the profits of my ferry are impaired, I shall have an action on the case against him.' "

See, also:

—*Osborne* v. *Bank of United States*, 9 Wheat. 738.

New Orleans Gas Co. v. *Louisiana Light Co.*, 115 U. S. 650.

Appellant under its grant from the State does not have the exclusive right to maintain and operate a gin in the City of Durant. Its grant, however, will be protected from impairment or destruction by other gins the maintenance and operation of which are sought to be sustained under a void law. The grant to plaintiff, while not exclusive in the sense that other valid grants may not be made, is nevertheless exclusive insofar as all persons or corporations are concerned to whom a valid grant has not been made. This identical question of a court of equity's jurisdiction has been before the Supreme Court of Oklahoma several times.

—*Bartlesville Electric Light & Power Co.* v. *Bartlesville Interurban Ry. Co.*, 26 Okla. 453, 29 L. R. A. (N. S.) 77.

Tulsa Street Ry. Co. v. *Oklahoma Union Traction Co.*, 27 Okla. 339, 342, 343.

Henry v. *Bartlesville G. & O. Co.*, 33 Okla. 473, 478.

Melville Gas Light Co. v. *Vineland L. & P Co.*, 72 N. J. Eq. 305.

In the case of *Bartlesville Electric Light & Power Co.* v. *Bartlesville Interurban R. Co., supra*, the following appears in the syllabus.

> "An ordinance of a municipal corporation granting to a corporation authority to use the streets, alleys and public grounds of a city for the purpose of constructing and operating an electric light and power plant to furnish light and power to a city and its inhabitants confers privileges which are exclusive in their nature against all persons upon whom similar rights have not been conferred; and any person or corporation attempting to exercise such right without legislative authority or sanction, invades the private property rights of the corporation to whom such franchise has been granted, and may be restrained at the instance of the owner of the franchise."

In *Peoples Transit Co.* v. *Henshaw*, 20 Fed. (2nd) 87, the Circuit Court of Appeals for the Eighth Circuit reviewed a decree of the United States District Court for the Western District of Oklahoma and concluded that the injunction granted by the lower court protecting the receivers of a street railway company in the enjoinment of its fran-

chise against unlawful competition was proper. In that case the franchise of the street railway company was not exclusive in the sense that a franchise could not be legally granted to a competitive company. The Court intervened, however, to protect the holder of the franchise and its revenues derived thereunder from impairment by the acts of the others who either had no franchise or sought to justify their acts under a void grant. The Court summed up its position as follows:

> "It is very clear that the operation of busses in violation of the ordinance would directly affect the revenues of appellees, that it is vital property interest to them."

In Pomeroy's Equity Jurisprudence, Vol. 5, Sections 2016, 2017, this subject is considered and a portion of Section 2017 reads as follows:

> "It is not necessary, 'to entitle the owner to relief in equity, that the franchise should be an exclusive franchise in the sense that the grant of another similar franchise to be exercised and enjoyed at the same place would be void.' The theory is 'that the defendant, who has no franchise, is acting in violation of law in operating * * * without authority from the sovereign power, and that the owner of the franchise may complain of and restrain such illegal acts when they result in injury to his franchise, which, in the eye of the law, is property. As to the one who is invading his rights without legal sanction, the franchise is an exclusive franchise, although the owner of it might not be entitled to any protection as against the granting of a similar franchise to another."

Appellant is denied due process of law and the equal protection of the laws.

The Act which we are challenging as denying appellant due process of law and the equal protection of the laws provides that any one desiring to maintain and operate a cotton gin must first secure permission from the State (Sec. 3713, C. O. S. 1921, as amended, see appendix), which will be granted after a hearing in the event the applicant proves the proposed gin to be a needed utility, and that the applicant is a competent and desirable person or corporation to operate the gin. The Corporation Commission also has the right to take into consideration the responsibility, reliability and qualifications, as well as the competency of the applicant. (Sec. 3714, C. O. S. 1921 as amended, see appendix.) In the event, however, the applicant desires to maintain and operate a gin "to be run co-operatively", no hearing is required if the applicant presents with his application a petition signed by one hundred citizens and taxpayers of the community, and upon the presentation of such petition it is the mandatory duty of the Commission to issue a permit regardless of public convenience and necessity, and regardless of the applicant's responsibility, reliability and qualifications. (Sec. 3714, C. O. S. 1921 as amended, see appendix.) The signers of the petition need not be farmers or cotton raisers. All could be bankers, lawyers or doctors; and as gins are generally lo-

cated in some city or town, it can be readily understood how the applicant, by appealing to local pride, can go to a chamber of commerce meeting and secure all the signatures desired.

Under the laws of the State of Oklahoma there are two so-called Co-operative Acts, Article 16, Chapter 34 (Sec. 5598-5621, inclusive, C. O. S. 1921), and Article 34, Chapter 19 (Sec. 5637-5652, inclusive, C. O. S. 1921). The first Act, Article 16, Chapter 34, provides for the formation of non-stock, non-profit, mutual help associations. Such an association, if formed for the purpose of ginning cotton, may gin for its members only.

The second Act, Article 19, Chapter 34, authorizes the formation of stock associations to engage in industrial pursuits for profit, and under this Act corporations such as appellee may be formed to engaged in the general ginning business for profit.

The lower court in the inception of its opinion states that if an Act is subject to two constructions the one will be adopted which will render the Act va[illegible] It then concludes that "to be operated co-operatively" as used in the proviso of the Act applies to associations organized under Article 16, Chapter 34, the language of the Court being as follows:

"Under this statute (Article 16, Chapter 34), a co-

operative gin may be organized by its growers and producers and operated for purpose of ginning seed cotton, preparing for market such cotton and seed, and the manufacturing of by-products thereof. A gin 'to be operated co-operatively' is a classification different from the ordinary commercial gin for which an adjudication of necessity therefor is required. Such class acting in such a co-operative way in ginning and marketing their own agricultural products in preparing their own cotton and seed and products thereof for market is a reasonable classification and not violative of the Fourteenth Amendment.

"As to said proviso for the issuance of license for gins 'to be operated co-operatively', if two constructions equally reasonable may be reached, one rendering the proviso violative of the Constitution and the other valid, that should be adopted which would permit it to stand, the presumption being that the Legislature intended that which was permissible and valid, and therefore in using the term, 'to be operated co-operatively' intended that such gin should be organized and operated under the co-operative act as contained in Article 16, Chapter 34, C. O. S. annotated 1921, and amendments thereto."

The appellee, Durant Co-operative Gin Company, however, was not organized under this Act, but under Article 19, Chapter 34, and the Supreme Court of Oklahoma has held that the exemption applies to corporations so organized. (*Choctaw Cotton Oil Co. et al.* v. *Corporation Commission et al.*, 247 Pac. 390, 121 Okla. 51.) Such is also the interpretation of said proviso by the Corporation Commission of the State which is charged with the duty of administering and enforcing the Act.

The lower Court next held in its opinion that the exemption in the gin Act applied to associations organized under the latter statute as well as under former non-stock, non-profit, mutual help Act, its view being that the separate classification of such associations was proper since their internal corporate affairs were in some particulars handled in a different manner than those of corporations generally, although so far as the public in general is concerned their external affairs are handled in the same manner.

In considering this case we feel sure that the Court will not be confused by the discussion in the lower Court's opinion of a good many matters and facts which have nothing to do with this case. As will be observed, it was tried on an agreed statement of facts. We bring this matter to the Court's attention since the lower Court, we judge from its opinion, was influenced more by the pleadings than by the facts. The articles of incorporation of appellee, Durant Co-operative Gin Company, are set forth in the agreed statement of facts. It will be observed from them that it may engage in the general ginning and cotton seed business and its ginning rates are fixed by the Corporation Commission.

As far as the public is concerned, appellant and appellee gin company are similarly situated. The lower Court held, nevertheless, that it was proper to separately classify

them and to accord more favorable treatment to one than to the other. Such classification, we contend, is arbitrary, discriminatory, without any reasonable basis, and therefore a denial of the equal protection of the laws.

The due process and the equal protection clauses of the Fourteenth Amendment have been so often construed by this Court that it would be presumptious on our part to burden the Court with an extended discussion. The meaning of the equal protection clause and its extent was defined in *Ex Parte Virginia*, 100 U. S. 339, as follows:

> "It suffers no other or greater burden or charges to be laid upon one man that such as are equally borne by others."

In *Barbier* v. *Connoly*, 113 U. S. 27-31, the Court said the effect of the clause was:

> "That no impediment should be imposed on the pursuits of any one except as applied to the same pursuits of others under like circumstances; that no greater burden should be laid upon one man than are laid upon others in the same calling and condition."

In *Truax* v. *Corrigan*, 257 U. S. 312, 333, after discussing the earlier cases dealing with the equal protection clause, it was said:

> "Thus the guarantee was intended to secure equality of protection not only for all but against all similarly situated. Indeed, protection is not protection unless it does so. Immunity granted to a class, however limited, having the effect to deprive another class however limited, of a personal or property right is just as

clearly a denial of equal protection of the laws to the latter cass as if the immunity were in favor of or the deprivation of right permitted worked against the larger class."

—*Ex Parte Virginia*, 100 U. S. 339.

Barbier v. *Connoly*, 113 U. S. 27, 32.

Soon Hing v. *Crowley*, 113 U. S. 703, 709.

Yick Woo v. *Hopkins*, 118 U. S. 356, 369.

Hayes v. *Missouri*, 120 U. S. 68.

G. C. & S. F. v. *Ellis*, 165 U. S. 150, 154.

Cotting v. *Kansas City Stock Yards et al.*, 183 U. S. 79.

Connolly v. *Union Sewer Pipe Co.*, 184 U. S. 540.

Southern Ry. v. *Greene*, 216 U. S. 400.

A. T. & S.F. v. *Vosburg*, 238 U. S. 56.

Truax v. *Raich*, 239 U. S. 33.

Truax v. *Corrigan*, 257 U. S. 312.

Power Mfg. Co. v. *Saunders*, 274 U. S. 490.

Quaker City Cab Co. v. *Pennsylvania*, not yet reported, filed May 28, 1928.

We recognize that the amendment does not prevent proper classification by the Legislature, but it:

"* * * does require that the classification be not arbitrary but based upon a real and substantial difference, having a reasonable relation to the subject of the particular legislation. (*Power Mfg. Co.* v. *Saunders*, 274 U. S. 490.)"

—*Southern Railway Co.* v. *Greene*, 216 U. S. 400, 417.

The reasonableness of the classification is, of course, open to judicial review.

G. C. & S. F. Ry. Co. v. *Ellis*, 165 U. S. 150.

We also recognize the fact that no general rule can be formulated which will apply to every case, and that in determining:

> "Whether equal protection is denied there must be a consideration of the peculiar facts." (*Liberty Warehouse Co.* v. *Burley Tobacco Growers Co-operative Market Assn.*, not yet reported; opinion filed Feb. 20, 1928.)
>
> —*Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540.

We contend in the instant case that the classification is arbitrary, capricious and based on no substantial difference, having a reasonable relation to the subject and purpose of the legislation. The classification depends upon ownership alone, and this Court, in *Quaker City Cab Company* v. *Pennsylvania* (not yet officially reported; opinion filed May 28, 1928) struck down the Act there in question as denying equal protection, because "the character of the owner is the sole fact on which the distinction and discrimination are made to depend." The business of appellant, an individual, and the authorized business of appellee, Durant Co-operative Gin Company, is identical. The Act says that all persons desiring to maintain and operate a cotton gin must comply with the Act and make a showing

of public necessity, convenience, etc., while a company organized under Article 19, Chapter 34, is exempt from such requirement.

The lower Court was evidently under the erroneous impression that appellant was a corporation, for in its opinion considerable space is devoted to pointing out the differences between an ordinary corporation organized under the general law and a corporation such as appellee organized under Article 19, Chapter 34.

The difference between an individual owner and a corporation organized under Article 19, Chapter 34, is no greater than the difference between an individual and a corporation organized under the general law, and this Court has held that the latter difference is not sufficient to justify classification and discriminatory treatment of corporations in favor of individuals similarly situated.

> *Kentucky Co.* v. *Paramount Exchange*, 262 U. S. 490.
>
> *Quaker City Cab Co.* v. *Pennsylvania*, not reported, opinion filed May 28, 1928.

The instant case appears to us to be stronger than the foregoing, because an individual owner of a gin is herein discriminated against in favor of a corporation.

Our position is well summed up in the case of *State* v. *Nashville C. & S. L. Ry. Co.*, 124 Tenn. 1, wherein the Court said:

"It does not apply to natural persons, either as individuals or members of a partnership or firm, engaged in conducting the same business, and with similar employes. New burdens and restrictions are placed upon corporations, the property of which belongs to individual shareholders, which are not placed upon natural persons engaged in the same business, conducted in the same way and at the same place. We can see no good reason or natural and reasonable basis for this discrimination. None has been suggested or can be suggested, for they do not exist. The application of the statute is made to depend solely upon whether the employer is a natural or artificial person, between which, within the protection of the constitutional provisions invoked, there is no distinction. The distinction made is in the character of the employer, and not in that of the employment or business conducted."

One of the cases upon which we place our chief reliance is that of *Connolly* v. *Union Sewer Pipe Company*, 184 U. S. 540, and that case's application is made still more apparent in the light of its explanation by this Court in *Liberty Warehouse Co.* v. *Burley Tobacco Growers Co-operative Marketing Assn.* (not yet reported; opinion filed Feb. 20, 1928):

"*Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, is much relied upon. But there the circumstances differed radically from those here presented; and always to determine whether equal protection is denied there must be consideration of the peculiar facts. Connolly resisted judgment for the purchase price of pipe upon the ground that the Union Company, the vendor, belonged to a combination or trust, made participation therein criminal, and directed that those who purchased articles from an offending member should not

be held liable for the price. Section 9 declared: 'The provisions of this Act shall not apply to agricultural products or livestock while in the hands of the producer or raiser.' This Court held that because of the exemption the Union Company was denied the equal protection of the law. It was forbidden to do what others could do with impunity. Here the situation is very different. The questioned statute undertakes to protect sanctioned contracts against interference—no one could lawfully do what the warehouse company did."

Appellant here is forbidden to do what others can do—operate a gin without a showing of public convenience, and necessity, etc. By the terms of the Act all are forbidden to maintain and operate a gin without such a showing, and then a special, favored group is exempted. Just as in the Union Sewer Pipe case all were forbidden to participate in combinations and trusts, and then the Act specifically exempted from its operation "agricultural products or livestock while in the hands of the producer or raiser."

The purpose of the gin Act was to regulate the number of gins, and by such regulation provide only a sufficient number to take care of the cotton raised in their vicinity. The Legislature recognized the fact that so far as the public was concerned it was economically unsound to have more gins than necessary to handle the crop. It knew that with the declaration that the ginning of seed cotton was a public business and subject to regulation particularly as to rates, that a reasonable return on the property de-

voted to the public service must be allowed. It desired by this Act to make a decrease in rates possible or to at least prevent an increase in rates which would naturally follow if more gins were established than were reasonably required.

With such a clear purpose in mind, is there any reasonable basis for declaring the public policy of the State in one breath and then nullifying it by an exemption in the next? If the establishment of more gins than are required is contrary to public policy as tending to increase ginning rates, what difference does it make whether they are established by individuals, partnerships, corporations organized under the general law, or corporations organized under Article 19, Chapter 34. All are in the same general class; all are engaged in ginning for hire at the same rates the cotton offered them by the general public—they are engaged in a business by statute open to all, "subject to such regulations, applicable alike to all in like conditions as the State may legally prescribe." *Connoly* v. *Union Sewer Pipe Company,* 184 U. S. 540, 560. We cannot perceive if the unrestrained establishment of gins is "hurtful to the public interest" as declared by the Legislature, and should be regulated and restrained, why their establishment by corporations organized under Act 19, Chapter 34, "is not also hurtful." *Connolly* v. *Union Sewer Pipe Company,* 184 U. S. 540, 564.

"It is quite a different thing for the State, under its general police power, to enter the domain of trade or commerce, and discriminate against some by declaring that particular classes within its jurisdiction shall be exempt from the operation of a general statute, making it criminal to do certain things connected with domestic trade or commerce. Such a statute is not a legitimate exertion of the power of classification, rests upon no reasonable basis, is purely arbitrary and plainly denies the equal protection of the laws to those against whom it discriminates."

—*Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, 563.

The proviso is separable from the remainder of the Act.

The proviso alone should be held invalid. The Legislature so desired, and its intent must usually be determined by the Court from a consideration of the interdependence of portions of the Act in question.

Loeb v. *Township Trustees*, 179 U. S. 472, 490.

Connolly v. *Union Sewer Pipe Co.*, 184 U. S. 540, 565.

Berea College v. *Kentucky*, 211 U. S. 45, 54, 55.

Truax v. *Corrigan*, 257 U. S. 312, 341, 342.

The legislative intent in regard to the Act involved herein is clearly expressed in Section 3718, C. O. S. 1921:

"If it shall be held that any section or part of a section contained in this Act is void by reason of it being repugnant to the Constitution, the failure of such portion shall not be held to defeat the remaining portions of this Act."

In addition to the legislative declaration contained in the foregoing section, it will be remembered that the challenged proviso did not appear in the original Act or in its 1923 amendment, but was added by the Legislature in 1925.

CONCLUSION.

It is respectfully submitted that the United States District Court for the Western District of Oklahoma erred in denying appellant a permanent injunction, and its action in so doing should be reversed.

ROBT. M. RAINEY,
STREETER B. FLYNN,
Attorneys for Appellants.

RAINEY, FLYNN, GREEN & ANDERSON,
CALVIN JONES,
Of Counsel.

APPENDIX

OKLAHOMA STATUTES

The present Oklahoma statutes affecting cotton gins, insofar as applicable herein, are as follows:

Section 3712, C. O. S. 1921 (Sess. L. 1915):

"*Cotton Gins—Declared Public Utility.* That cotton gins are hereby declared to be public utilities, and the operation of same for the purpose of ginning seed cotton is declared to be a public business."

Section 3713, C. O. S. 1921 (as amended, Ch. 191, p. 340, Sess. L. 1923):

"*Cotton Gins—License.* 1. No person or persons, or corporation in this State, shall be permitted to maintain and operate a gin for the purpose of ginning seed cotton without first having secured a license for such purpose from the State Corporation Commission, said license to be issued upon proper showing to be made as prescribed by the rules and regulations promulgated by the Commission. The fee for said license issued by the Corporation Commission is hereby fixed at three (3c) cents per bale, based on the number of bales ginned the previous year as shown by the final report of said gin on file with the Corporation Commission. In case of a new plant or a gin that did not operate the preceding year, a license fee of five dollars ($5.00) per gin stand will be charged; which sum shall be converted into the state treasury of the State of Oklahoma."

Section 3714, C. O. S. 1921 (Sess. L. 1915, as amended by Sec. 1, Ch. 109, p. 157, Sess. L. 1925):

"*Corporation Commission—Licenses.* 1. The Corporation Commission, in issuing such license, shall have the right to take into consideration the necessity for the operation of a gin for such purpose at the place of its location; provided nothing herein shall operate to prevent the licensing of gins now established, except for violation of the provisions of this Act or of the rules, regulations and requirements of the Corporation Commission made and promulgated pursuant to this Act. No new gin plants shall be constructed, installed or licensed, or any old gin removed from one point to another until satisfactory showing shall have been made to the Corporation Commission setting forth that such gin is a needed utility and that the proposed corporation, company, firm or individual is a competent and desirable corporation, company, firm or individual to establish and operate said gin as may appear in the discretion of said Commission; provided, that on the presentation of a petition for the establishment of a gin to be run co-operatively, signed by one hundred (100) citizens and taxpayers of the community where the gin is to be located, the Corporation Commission shall issue a license for said gin. The Commission shall have the right to take into consideration the responsibility and reliability and qualifications as well as the capacity of the person or persons or corporation to do such ginning business so far as to afford all reasonable facilities, conveniences and service to the public, and shall have the power and authority to require such services to be afforded the public. The inspectors provided herein shall be men who have served at least three years in practical and actual gin operation and shall be appointed by the Corporation Commission; that said inspectors shall have the power to make recommendations to the Commission as to the opening or closing of any gin or gins as well as to the affording by such gins of the reasonable facilities, conveniences and services to the public hereinbefore authorized to be required,

as well as to make such other reports and recommendations to the Corporation Commission as may, to said inspectors, appear necessary, reasonable and just."

Section 3715, C. O. S. 1921, as amended by Section 3, Ch. 191, Session Laws 1923:

"*Same—Power and Authority.*

"Section 3. That Section 3715, Compiled Oklahoma Statutes 1921, be and the same is hereby amended to reads as follows, too wit: (Sic) 3715. That the Corporation Commission shall have the same power and authority and be charged with the duty of regulating and controlling such cotton gins in all matters relating to the performance of public duties and the charges therefor, and correcting abuses and preventing unjust discrimination and extortion, as is exercised by said Commission as to transportation and transmission companies, and shall have the same power to fix rates, rules, charges and regulations to be observed by such person or persons or corporation, facilities and services as it may impose as to transportation or transmission companies. For the purpose of carrying into effect the provisions of this Act, there is hereby created a department of Cotton Gin Utilities under the Corporation Commission. The Commission shall appoint four inspectors of cotton gins, one of whom shall be selected as head of such department, who shall receive a salary of two thousand ($2,000.00) dollars per annum, whose functions, duties and term of office shall be regulated at the discretion of the Commission. There is also provided a stenographer for such Commission who shall receive a salary of twelve hundred ($1,200.00) dollars per annum. The fiscal year of all cotton gin utilities shall terminate March 31, 1924, and annually each year thereafter, and it shall be the duty of each and every corporation, company, firm or individual owning or operating a cotton gin to file a final report for the preceding year not later than 30 days

following the expiration of said fiscal year. Failure to file said report shall constitute a forfeiture of license and is hereby declared a misdemeanor and may be prosecuted as such. Said report to be in accordance with rules and regulations promulgated by the Commission from time to time."

Sections 3716, 3717 and 3718, C. O. S. 1921 (Sess. L. 1915):

"3716. *Appeals to the Supreme Court.* The orders made by said Commission fixing rates, charges, rules and regulations as to any person, persons, or corporation operating any gin or gins may be reviewed on appeal by the Supreme Court in the same manner, form, jurisdiction and procedure as apply to such orders made relative to transportation and transmission companies.

"3717. *Regulations—Enforcement of Orders.* That in all matters pertaining to the regulation and control of gins and ginning and the business of such, the Commission shall have the same power and authority as is now exercised by it under the law as to any matter pertaining to the public visitation, regulation or control of transportation and transmission companies, and may enforce its orders against any person, firm, company or corporation maintaining or operating a gin or gins, by imposing a fine against them, or either of them, not exceeding $100 for the violation of any of its orders.

"3718. *Validity of Several Sections.* If it shall be held that any section or part of a section contained in this Act is void by reason of it being repugnant to the Constitution, the failure of such portion shall not be held to defeat the remaining portions of this Act."

Section 3714, C. O. S. 1921, before amendment was as follows:

"3714. *Power of Corporation Commission—Location of Gins.* That the Corporation Commission, in issuing such license, shall have the right to take into consideration the necessity for the operation of a gin for such purpose at the place it is located; provided, nothing herein shall operate to prevent the licensing of gins now established. If the facts disclose that the ginning facilities afforded by gins already licensed are adequate for the reasonable demands of such place for the ginning of cotton, the said Corporation Commission will be justified in refusing such license; provided, that on the presentation of a petition signed by not less than fifty farmer petitioners of the immediate vicinity, the Corporation Commission must issue a license as set out in petition. In addition to said authority, said Commission shall have a right to take into consideration the responsibility, reliability and qualifications and the capacity of the person or persons, or corporations, to do such ginning business as to afford all reasonable facilities, conveniences and service to the public, and shall have the power and authority to require such facilities, conveniences and services to be afforded the public."

Section 3714, C. O. S. 1921, as amended by Section 2, Ch. 191, Session Laws 1923, but before the 1925 amendment, read:

"*Corporation Commission—Licenses.*

"Section 2. That Section 3714 of Compiled Oklahoma Statutes, Annotated, 1921, be and the same is hereby amended to read as follows:

"Section 3714. That the Corporation Commission in issuing such license shall have right to take into consideration the necessity for the operation of a gin for such purpose at the place of its location; provided, nothing herein shall operate to prevent the licensing of gins now established, except for violation of the

provisions of this Act or of the rules, regulations and requirements of the Corporation Commission made and promulgated pursuant to this Act. No new gin plants shall be constructed, installed, or licensed, or any old gin removed from one point to another until satisfactory showing shall have been made to the Corporation Commission setting forth that such gin is a needed utility, and that the proposed corporation, company, firm or individual is a competent and desirable person, corporation, company, firm or individual to establish and operate said gin as may appear in the discretion of said Commission. The Commission shall have the right to take into consideration the responsibility and reliability and qualifications as well as the capacity of the person or persons or corporation to do such ginning business, so as to afford all reasonable facilities, conveniences and services to the public, and shall have power and authority to require such facilities, conveniences and services to be afforded the public. The inspectors provided herein shall be men who have served at least three years in practical and actual gin operation, and shall be appointed by the Corporation Commission; that said inspectors shall have the power to make recommendations to the Commission as to the opening or closing of any gin or gins as well as to the affording by such gins of the reasonable facilities, conveniences and services to the public hereinbefore authorized to be required, as well as to make such other reports and recommendations to the Corporation Commission as may, to said inspectors, appear necessary, reasonable and just."